

# HOUSE BILL 1266

M3, M1

11r2973

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By: **Delegate Kipke**

Introduced and read first time: February 23, 2011

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Construction on Piers – Exception for Solar Panels**

3 FOR the purpose of authorizing the Board of Public Works to issue a certain license  
4 for the construction of a solar panel on a pier located on State wetlands under  
5 certain circumstances; exempting a certain project from a certain prohibition on  
6 the issuance of a wetlands permit relating to construction on a pier located on  
7 State or private wetlands within the Chesapeake Bay Critical Area; authorizing  
8 the Secretary of the Environment to issue a certain permit for the construction  
9 of a solar panel on a pier located on private wetlands under certain  
10 circumstances; authorizing a local jurisdiction to issue a building permit for the  
11 construction of a solar panel on a pier located on State or private lands within  
12 the Critical Area under certain circumstances; and generally relating to the  
13 construction of nonwater dependent structures on piers.

14 BY repealing and reenacting, with amendments,  
15 Article – Environment  
16 Section 16–104  
17 Annotated Code of Maryland  
18 (2007 Replacement Volume and 2010 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Natural Resources  
21 Section 8–1808.4  
22 Annotated Code of Maryland  
23 (2007 Replacement Volume and 2010 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Environment**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 16–104.

2 (a) This section does not apply to any project involving the construction of a  
3 dwelling unit or other non–water dependent structure on a pier located on State or  
4 private wetlands in Prince George’s County.

5 (b) (1) Except as provided in paragraphs (2), (3), [and] (4), **AND (5)** of this  
6 subsection, notwithstanding any other provision of law, the Board of Public Works  
7 may not issue a license under this title for any project involving the construction of a  
8 dwelling unit or other non–water dependent structure on a pier located on State  
9 wetlands.

10 (2) This section does not prohibit or restrict the Board of Public Works  
11 from issuing a license for a project involving the construction of a dwelling unit or  
12 other non–water dependent structure on a pier located within the Critical Area that  
13 was issued a permit by the Secretary on or before January 1, 1989.

14 (3) The Board of Public Works may issue a license for a project  
15 involving the construction of a non–water dependent structure on a pier located on  
16 State wetlands if:

17 (i) The project is located in a marina owned by the State, a  
18 county, or a municipal corporation;

19 (ii) The project will enhance maritime transportation, the  
20 preservation of historic lighthouses, or the construction of historically accurate  
21 replicas;

22 (iii) The project is approved by local planning and zoning  
23 authorities;

24 (iv) The project is located in a priority funding area as  
25 designated under Title 5, Subtitle 7B of the State Finance and Procurement Article;  
26 and

27 (v) The project is located in an area that has been excluded from  
28 a local critical area program adopted or approved by the Critical Area Commission for  
29 the Chesapeake and Atlantic Coastal Bays under § 8–1807(c)(1)(i)1 of the Natural  
30 Resources Article.

31 (4) The Board of Public Works may issue a license for a project  
32 involving the construction of a dwelling unit or other non–water dependent structure  
33 on a pier located on State wetlands if:

34 (i) The project is constructed on a pier in existence as of  
35 December 1, 1985 that can be verified by a Department of Natural Resources aerial  
36 photograph dated 1985, accompanied by a map of the area;

1                   (ii) The project does not require an expansion of the pier greater  
2 than 25% of the area of piers or dry docks removed on the same property; however,  
3 additional expansion may be allowed in the amount of 10% of the water coverage  
4 eliminated by removing complete piers from the same or other properties. If the  
5 horizontal surface area of a pier to be removed is not intact but the remaining pilings  
6 identify its previous size, that area may be used in determining the additional  
7 expansion permitted. The project expansion based on water coverage eliminated can  
8 be considered only if all nonfunctional piers on the property are removed except for the  
9 project pier. The total expansion may not exceed 35% of the original size of the piers  
10 and dry docks removed;

11                   (iii) The project is approved by local planning and zoning  
12 authorities;

13                   (iv) The project is located in an intensely developed area, as  
14 designated in programs adopted or approved by the Critical Area Commission for the  
15 Chesapeake and Atlantic Coastal Bays under Title 8, Subtitle 18 of the Natural  
16 Resources Article; and

17                   (v) The project allows public access to tidal waters, if  
18 appropriate.

19                   **(5) THE BOARD OF PUBLIC WORKS MAY ISSUE A LICENSE FOR**  
20 **THE CONSTRUCTION OF A SOLAR PANEL ON A PIER LOCATED ON STATE**  
21 **WETLANDS IF THE SOLAR PANEL DOES NOT:**

22                   **(I) INCREASE THE EXISTING DIMENSIONS OF THE PIER BY**  
23 **MORE THAN 10% TO ALLOW FOR THE OVERLAP OF MOUNTING BRACKETS OR**  
24 **OTHER STRUCTURES NECESSARY TO THE INSTALLATION OF THE SOLAR PANEL;**  
25 **AND**

26                   **(II) EXTEND MORE THAN 4 FEET ABOVE OR 1 FOOT BELOW**  
27 **THE DECK OF THE PIER.**

28                   **[(5)] (6)** Except for projects under [paragraph] **PARAGRAPHS (2)**  
29 **AND (5)** of this subsection, and in addition to all other provisions of this section, all  
30 projects involving the construction of a dwelling unit or other non-water dependent  
31 facility on a pier located on State or private wetlands within the Chesapeake Bay  
32 Critical Area may not be issued a wetlands permit unless:

33                   (i) The applicant demonstrates that the construction and  
34 operation of the project will not have a long term adverse effect on the water quality of  
35 the adjacent body of water in accordance with standards established by the local  
36 jurisdiction's critical areas program;

1 (ii) The applicant is required to improve the water quality of  
2 existing stormwater runoff from the project site into adjoining waters in accordance  
3 with standards established by the local jurisdiction's critical areas program; and

4 (iii) The applicant demonstrates that any sewer lines or other  
5 utility lines extended for the pier will not adversely affect the water quality of  
6 adjoining waters in accordance with standards established by the local jurisdiction's  
7 critical areas program.

8 (c) (1) Except as provided in paragraphs (2) [and], (3), AND (4) of this  
9 subsection, notwithstanding any other provision of law, the Secretary may not issue a  
10 permit under this title for any project involving the construction of a dwelling unit or  
11 other non-water dependent structure on a pier located on private wetlands.

12 (2) The Secretary may issue a permit for a project involving the  
13 construction of a non-water dependent structure on a pier located on private wetlands  
14 if:

15 (i) The project is located in a marina owned by the State, a  
16 county, or a municipal corporation;

17 (ii) The project will enhance maritime transportation, the  
18 preservation of historic lighthouses, or the construction of historically accurate  
19 replicas;

20 (iii) The project is approved by local planning and zoning  
21 authorities;

22 (iv) The project is located in a priority funding area as  
23 designated under Title 5, Subtitle 7B of the State Finance and Procurement Article;  
24 and

25 (v) The project is located in an area that has been excluded from  
26 a local critical area program adopted or approved by the Critical Area Commission for  
27 the Chesapeake and Atlantic Coastal Bays under § 8-1807(c)(1)(i)1 of the Natural  
28 Resources Article.

29 (3) The Secretary may issue a permit for a project involving the  
30 construction of a dwelling unit or other non-water dependent structure on a pier  
31 located on private wetlands if:

32 (i) The project is constructed on a pier in existence as of  
33 December 1, 1985 that can be verified by a Department of Natural Resources aerial  
34 photograph dated 1985, accompanied by a map of the area;

35 (ii) The project does not require an expansion of the pier greater  
36 than 25% of the area of piers or dry docks removed on the same property; however,

1 additional expansion may be allowed in the amount of 10% of the water coverage  
2 eliminated by removing complete piers from the same or other properties. If the  
3 horizontal surface area of a pier to be removed is not intact but the remaining pilings  
4 identify its previous size, that area may be used in determining the additional  
5 expansion permitted. The project expansion based on water coverage eliminated can  
6 be considered only if all nonfunctional piers on the property are removed except for the  
7 project pier. The total expansion may not exceed 35% of the original size of the piers  
8 and dry docks removed;

9 (iii) The project is approved by local planning and zoning  
10 authorities;

11 (iv) The project is located in an intensely developed area, as  
12 designated in programs adopted or approved by the Critical Area Commission for the  
13 Chesapeake and Atlantic Coastal Bays under Title 8, Subtitle 18 of the Natural  
14 Resources Article; and

15 (v) The project allows public access to tidal waters, if  
16 appropriate.

17 **(4) THE SECRETARY MAY ISSUE A PERMIT FOR THE**  
18 **CONSTRUCTION OF A SOLAR PANEL ON A PIER LOCATED ON PRIVATE WETLANDS**  
19 **IF THE SOLAR PANEL DOES NOT:**

20 **(I) INCREASE THE EXISTING DIMENSIONS OF THE PIER BY**  
21 **MORE THAN 10% TO ALLOW FOR THE OVERLAP OF MOUNTING BRACKETS OR**  
22 **OTHER STRUCTURES NECESSARY TO THE INSTALLATION OF THE SOLAR PANEL;**  
23 **AND**

24 **(II) EXTEND MORE THAN 4 FEET ABOVE OR 1 FOOT BELOW**  
25 **THE DECK OF THE PIER.**

## 26 Article – Natural Resources

27 8–1808.4.

28 (a) This section does not apply to any project involving the construction of a  
29 dwelling unit or other non–water dependent structure on a pier located on State or  
30 private wetlands within the Critical Area in Prince George’s County.

31 (b) (1) In this section, “pier” means any pier, wharf, dock, walkway,  
32 bulkhead, breakwater, piles, or other similar structure.

33 (2) “Pier” does not include any structure on pilings or stilts that was  
34 originally constructed beyond the landward boundaries of State or private wetlands.

35 (c) This section applies notwithstanding:

1 (1) Any other provision of this subtitle; and

2 (2) Any criteria or regulation adopted by the Commission under this  
3 subtitle.

4 (d) This section preempts any other requirement concerning piers in the  
5 Critical Area.

6 (e) (1) Except as provided in paragraphs (2), (3), [and] (4), **AND (5)** of this  
7 subsection, a local jurisdiction may not issue a building permit for any project  
8 involving the construction of a dwelling unit or other non-water dependent structure  
9 on a pier located on State or private wetlands within the Critical Area.

10 (2) This section does not prohibit or restrict a local jurisdiction from  
11 issuing a building permit for a project involving the construction of a dwelling unit or  
12 other non-water dependent structure on a pier located on State or private wetlands  
13 within the Critical Area that was issued a permit by the Secretary on or before  
14 January 1, 1989.

15 (3) A local jurisdiction may issue a building permit for a project  
16 involving the construction of a dwelling unit or other non-water dependent structure  
17 on a pier located on State or private wetlands within the Critical Area if:

18 (i) The project is constructed on a pier in existence as of  
19 December 1, 1985 that can be verified by a Department of Natural Resources aerial  
20 photograph dated 1985, accompanied by a map of the area;

21 (ii) The project does not require an expansion of the pier greater  
22 than 25% of the area of piers or dry docks removed on the same property; however,  
23 additional expansion may be allowed in the amount of 10% of the water coverage  
24 eliminated by removing complete piers from the same or other properties. If the  
25 horizontal surface area of a pier to be removed is not intact but the remaining pilings  
26 identify its previous size, that area may be used in determining the additional  
27 expansion permitted. The project expansion based on water coverage eliminated can  
28 be considered only if all nonfunctional piers on the property are removed except for the  
29 project pier. The total expansion may not exceed 35% of the original size of the piers  
30 and dry docks removed;

31 (iii) The project is approved by local planning and zoning  
32 authorities; and

33 (iv) The project is located in an intensely developed area, as  
34 designated in programs adopted or approved by the Critical Area Commission under  
35 this subtitle.

1           (4) A local jurisdiction may issue a building permit for the repair of an  
2 existing dwelling unit or other non-water dependent structure on a pier located on  
3 State or private wetlands within the Critical Area.

4           **(5) A LOCAL JURISDICTION MAY ISSUE A BUILDING PERMIT FOR**  
5 **THE CONSTRUCTION OF A SOLAR PANEL ON A PIER LOCATED ON STATE OR**  
6 **PRIVATE WETLANDS WITHIN THE CRITICAL AREA IF THE SOLAR PANEL DOES**  
7 **NOT:**

8                   **(I) INCREASE THE EXISTING DIMENSIONS OF THE PIER BY**  
9 **MORE THAN 10% TO ALLOW FOR THE OVERLAP OF MOUNTING BRACKETS OR**  
10 **OTHER STRUCTURES NECESSARY TO THE INSTALLATION OF THE SOLAR PANEL;**  
11 **AND**

12                   **(II) EXTEND MORE THAN 4 FEET ABOVE OR 1 FOOT BELOW**  
13 **THE DECK OF THE PIER.**

14           **[(5)] (6)** Except for projects under **[paragraph] PARAGRAPHS (2)**  
15 **AND (5)** of this subsection, and in addition to all other provisions of this section, all  
16 projects involving the construction of a dwelling unit or other non-water dependent  
17 facility on a pier located on State or private wetlands within the Critical Area may not  
18 be issued a building permit unless:

19                   (i) The applicant demonstrates that the construction and  
20 operation of the project will not have a long term adverse effect on the water quality of  
21 the adjacent body of water in accordance with standards established by the local  
22 jurisdiction's critical areas program;

23                   (ii) The applicant is required to improve the water quality of  
24 existing stormwater runoff from the project site into adjoining waters in accordance  
25 with standards established by the local jurisdiction's critical areas program; and

26                   (iii) The applicant demonstrates that any sewer lines or other  
27 utility lines extended for the pier will not adversely affect the water quality of  
28 adjoining waters in accordance with standards established by the local jurisdiction's  
29 critical areas program.

30           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2011.